UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MICHAEL J. FLYNN Plaintiff	)	
VS.	)	CIVIL ACTION NO. 83-2642-C
LAFAYETTE RONALD HUBBARD a/k/a L. RON HUBBARD Defendant	)	

PLAINTIFF'S MEMORANDUM OF LAW AND FACT
IN OPPOSITION TO MARY SUE HUBBARD'S MOTION
FOR LEAVE TO INTERVENE

TABLE OF CONTENTS

INTRODUCTION

Plaintiff submits this memorandum of law and fact in opposition to Mary Sue Hubbard's proposed intervention into this action purusant to Fed. R. Civ. P. 24(a)(2) or 24(b)(2). Plaintiff asserts that Mrs. Hubbard has failed to satisfy the three requirements which must be met before she is allowed to intervene as of right; specifically, she does not have a significantly protectable interest in the property or transaction which is the subject of this action, her ability to protect any interest which she may have will not, as a practical matter, be impaired or impeded if she is not able to intervene, and her interests are adequately represented by her husband, who is the Defendant in this action. Moreover, this is a singularly inappropriate case to grant permissive intervention, since to do so would allow the Defendant to defraud this Court and other District Courts, would unnecessarily increase the time and expense required to resolve this matter, would unduly broaden the scope of this litigation since the claims Mary Sue Hubbard seeks to put forward do not have common questions of fact or law with the plaintiff's claim and would delay and prejudice the rights of the plaintiff.

FACTUAL BACKGROUND AND ARGUMENT SUMMARY

In Paragraph #3 of her Declaration, Mary Sue Hubbard states that the circumstancces which gave rise to this action are "too

complex to detail here" Plaintiff believes that the factual background is complex, but believes that this court must know the full background of this litigation in order to understand the extraordinary situation which has caused Mary Sue Hubbard to make this desperate attempt to intervene in this suit against her husband. Only if this Court is apprised of the full factual background will it understand why Mrs. Hubbard is so eager to take the seemingly incomprehensible action of interveining in a tort suit against her husband as a defendant. The Court will also realize that permitting such an action does not advance justice, but would result in the continuation of a fraud upon the District Courts of the United States.

As the plaintiff has detailed in his complaint, the genesis of this litigation occurred in July 1979, when the plaintiff agreed to represent LaVenda Van Schaick in her claim for a refund against the Church of Scientology of California, (CSC). At that time plaintiff knew little about Scientology, and had no intention of becoming involved in massive litigation against CSC. Yet, the plaintiff soon became emeshed in a web of intimidation and terror. As alleged in Plaintiff's Complaint, Hubbard, the controlling force behind CSC, viewed plaintiff's actions as an attempt to destroy the Church of Scientology, and pursuant to the Fair Game Policy, explained in paragraph 11 of Plaintiff's Complaint, attempted to destroy plaintiff first. Solely because plaintiff represented Ms. Van Schaick and other ex-Scientologists who sought to have their

claims against CSC and other Scientology organizations heard by the Courts, Hubbard through various agents initiated a wave of terror against the plaintiff. Among other actions alleged, Hubbard's agents infiltrated plaintiff's law offices, stole plaintiff's files and papers, harrassed plaintiff, his family, his friends and his professional associates, attempted to separate plaintiff from his clients, defamed plaintiff, brought twelve groundless law suits against plaintiff and his colleagues and employees seven of which have been dismissed, brought nine groundless bar complaints to the Board of Bar Overseers in an attempt to get plaintiff disbarred, placed water in the gas tanks of plaintiff's private plane in an attempt to kill him, stole plaintiff's telephone codes and charged calls to those codes, attempted to frame plaintiff by stealing the telephone codes of a California company unknown to plaintiff and then called plaintiff's clients on those codes, harrassed plaintiff's clients and stole their files from plaintiff's office; called in a bomb threat to plaintiff; threatened to poison plaintiff; issued false and defamatory press releases and articles about plaintiff; provided false financial information to the IRS in order to initiate a tax investigation of the plaintiff, illegally taperecorded Plaintiff's telephone calls, trespassed upon plaintiff's property, and engaged in a wholesale pattern of harrasive conduct.

After conferring with several, top level former Scientologists he has learned that notwithstanding CSC's and other Scientology organizations' claims to the contrary, Hubbard is still in control of CSC, that Hubbard directs what actions CSC and other Scientology "churches" will take, that Hubbard has received massive amounts of cash from most Scientology organizations, including CSC, and that Hubbard himself was ultimately responsible for the actions taken against him. See Affidavit of Michael J. Flynn filed herewith, annexing a Declaration of Gerald Armstrong, as Exhibit 1, (hereinafter Exhibits to this Flynn affidavit will simply be referred to as Exhibits) and the Affidavit of Michael J. Flynn, filed as Exhibit B to plaintiff's opposition to motion to stay proceedings. Understandably, Plaintiff, who has suffered four years of personal attacks by Hubbard's proxies while the main perpetrator has tried to stay out of sight has now initiated this action against the man who is directly responsible for the torts committed against him.

It is into this arena that Mary Sue Hubbard now wishes to intervene. Mrs. Hubbard predominately bases her claim upon her belief that her husband will not appear to defend the action. She seeks to have the Court believe that Hubbard is a man so involved in the "religion" he created that he must remain in "seclusion" in some unknown hermitage in order to avoid intrusions and impediments to his work. See declaration of Mary Sue Hubbard, paragraphs #9-13.

His devotion to the "religion" is so complete, she would argue, he would even fail to defend himself in multi-million dollar lawsuits. Id. paragraph #13.

The truth, however, about Hubbard's non-appearance in other cases, and possibly this one, is far less mystical than Mrs. Hubbard makes it out to be. "Seclusion", as used by Mrs. Hubbard, is really a euphemism for "hiding", and what Hubbard is hiding from is the jurisdiction of the federal courts.

Hubbard's latest period of "seclusion" began in February, 1980, shortly after La Venda Van Schaick filed her lawsuit against Hubbard and CSC. No one in CSC admits to having seen Hubbard since that time, and Mrs. Hubbard, elsewhere, has repeatedly stated that she has not seen her husband since late 1979. See deposition of Mary Sue Hubbard taken in McLean v. Church of Scientology of California, #81-174-Civ. T-K, (Mid. Dist. Fla.) p. 29, a copy of which is annexed as Exhibit 2; Declaration of Mary Sue Hubbard, September 21, 1982, paragraph #31, a copy of which is attached as Exhibit 3. Conveniently, this period of seclusion directly coincided with Hubbard's being named as a defendant in a number of lawsuits in federal courts including Burden v. Church of Scientology of California, et al., #80-501-Civ. T-K, (Mid. Dist. Fla.) and McLean v. Church of Scientology of California, No. 81-174-C-T-K (Mid. Dist. Fla.).

Also during this period, Hubbard has been investigated by the I.R.S., the F.B.I., the Toronto Provincial Police, the Arizona Attorney General, and the Florida Department of Law Enforcement. See Affidavit of Michael J. Flynn filed herein in support of plaintiff's motion for preliminary discovery.

By going into "seclusion", Hubbard could avoid having to answer to state and federal authorities and private individuals for the wrongs he is accused of. It appears he also assumed this tactic would mean the courts would never be able to hold him accountable. If no one knew where he was, presumably, he could not be served, and no court would ever have jurisdiction over him.

This is precisely the defense Hubbard tried to present in McLean and Burden, the only recent cases of which plaintiff is aware where Hubbard was represented by counsel. While several upper level members of CSC, Mary Sue Hubbard and Hubbard's own attorneys attempted to conceal Hubbard's whereabouts and their contacts with him, his attorneys submitted motion after motion to dismiss, all centered upon the fact that the plaintiffs in Burden or McLean were unable to specifically locate him. In addition to claiming Hubbard had never been served or that insufficient contacts existed to Florida to maintain jurisdiction, both Hubbard's attorneys claimed that no diversity jurisdiction existed because Hubbard was a "nomad". See memorandum in support of motion to dismiss for lack of subject matter jurisdiction; filed in Burden p. 6-7, 8-9, a copy of which is attached hereto as Exhibit 4.

Although Hubbard's attorneys enjoyed much success in prolonging the proceedings in Burden and McLean, they did not succeed in their ultimate goal successfully defending the lawsuits without Hubbard having to make any appearance at all. On January 8, 1982, the Court in McLean rejected Hubbard's attorneys' arguments concerning jurisdiction and permitted substituted service on Hubbard.[1] See Order of March 15, 1982, in McLean, filed with plaintiff's motion for substituted service herein as Exhibit D. In reaching this conclusion the court specifically found that Hubbard was deliberately concealing himself. Id. p. 5. Moreover, the court's allowing substituted service created the very real possibility that Hubbard would have to submit to depositions. The existence of an attorney of record meant that even if the plaintiffs in Burden and McLean did not know his exact whereabouts, Hubbard's deposition could still be noticed by serving the attorney.

Hubbard apparently has no intention of ever allowing the Burden or McLean plaintiffs to confront him, even if required to do so under the law. Despite the fact that his deposition has been noticed numerous times, he has never appeared. See Response to

---

[1]The court also indicated that substituted service would be permitted in the Burden case which the court had treated during the in preliminary stages as sister cases, pending amendment of the complaint.

Notice of Taking Deposition Scheduled for December 22, 1982, Paragraph #3, a copy of which is annexed as Exhibit 5. Instead, Hubbard's attorney, Alan Goldfarb after litigating in Hubbard's name for a year and a half filed affidavits saying he had never been in contact with Hubbard. See Motion to Withdraw as Attorneys; and Alan Goldfarb's Motion to Withdraw both of which are annexed as Exhibit 6. On this basis, Goldfarb tried to claim that all notices served on him concerning Hubbard's deposition were invalid. See Exhibit 5. In addition to being an outragous attempt to deceive a Federal Court about the location at L. Ron Hubbard, as will be explained in Section IA3, infra, Goldfarb's affidavit demonstrates the preposterous ploys Hubbard has previously employed in order to avoid having to appear in an action while making the prosecution of that lawsuit as difficult and expensive as possible for the other party.

The court in reviewing Mary Sue Hubbard's application for intervention must be cognizant of the desperate lengths to which Hubbard and his allies and protectors will go to in order to avoid having Hubbard actually appear for a deposition or court proceeding. Hubbard has learned his lesson in McLean, and subsequently has never had an attorney represent him in another lawsuit. This is not because Hubbard in his "seclusion" does not know any lawyers or is unaware of the existence of these suits. When it suits his purposes, Hubbard, even after February 1980, has

surrounded himself with a battery of lawyers. See Declaration of L. Ron Hubbard, Paragraph #7, and declaration of Sherman Lenske, paragraph #4, annexed to plaintiff's motion for substituted service as Exhibit G. Similarly, these lawyers are very familiar with the details of the litigation against Hubbard. See Affidavit of Julia Dragojevic, annexed as Exhibit C of plaintiff's motion to approve substituted service of process on L. Ron Hubbard, where a letter from the firm that has called itself Hubbard's general counsel offers to send Ms. Dragojevic copies of all papers of three cases where Hubbard is a defendant. Clearly, Hubbard has consciously chosen not to participate in any litigation which concerns him.

This policy of non-appearance, though, has not resulted in any real harm to Hubbard, even in those cases where his non-appearance has led to a default. This is because in previous cases Hubbard has always been one of several co-defendants, the others being agents he controlled, such as CSC. Defaults awarded against him could not be taken to judgment because the proceedings as to the other defendants had not been completed. Thus, Hubbard has brilliantly and guilefully manipulated the judicial process so as to avoid judgment against him even after default. On one hand, he pretends to be above the system, to surrender his privacy, despite the torts and frauds he has committed against his unsuspecting followers. At the same time, though, he can avoid any penalty such behavior would normally incur by having his agent, CSC

or Mary Sue Hubbard in this case, actually defend the suit. Even if no valid defense on the merits exists, these agents have the ability and the money to prolong the litigation for years in discovery dispute. See the docket sheet in this jurisdiction in Cooper v. Church of Scientology of Boston, Inc., et al #81-681-MC 21 double-sided docket sheets. Further, because Hubbard has hidden himself, the plaintiff will not be able to get necessary discovery from a crucial party, making his burden of proving his case much more difficult. Examined from this angle, Hubbard can well afford to treat the legal system with contempt (and of course continue to infringe freely upon the rights of others), since it has no effective sanction to deter him.

The case at bar is different. Here Hubbard has no one to hide behind. If he is defaulted, a hearing on assessment of damages could be immediately applied for. Accordingly, under these circumstances, plaintiff believes Hubbard will defend. A precedent for such action exists in the California probate case where a trustee was sought to manage Hubbard's assets, In Re the Estate of L. Ron Hubbard, Riverside Superior Court, California No. 47750. When the court made it clear that a court-appointed Trustee would be appointed if Hubbard did not appear, he submitted his affidavit in order to protect his property. See affidavit of Michael J. Flynn, Paragraph #3 filed in support of plaintiff's motion for preliminary discovery. Plaintiff believes Hubbard will take similar action here

to protect his property. Plaintiff is making every effort to assure that he has notice of this action -- including notice to those who actively manage his affairs, are in regular, frequent contact with him and have the ability to contact him. See plaintiff's motion for substituted service. Thus, if he does not appear, it will be due to a conscious, informed decision on his part, and for once the plaintiff will be able to enforce the penalty the law mandates for such behavior.

This background, of course, also explains the eagerness of Mary Sue Hubbard to intervene. If another party may play the role of defendant, Hubbard can once again perform the part he has so masterfully orchestrated in the past. Hubbard may pretend to ignore the suit, perhaps even suffer a default which will not be satisfied for years while an alter ego actually provides a defense, and attempts to wear down the opposition by a series of dilatory and harrasive tactics. The result for Hubbard is the same as if he actually defended, except that the opposition has unfairly been deprived of valuable discovery and Hubbard's non-appearance can be used as a basis for spurious motions to dismiss. Permitting Mary Sue Hubbard to intervene, therefore, does not insure that all involved sides will be heard, as Rule 24 (a)(2) contemplates, but on the contrary, insures that the one indispensable party to this litigation, the only party who is the subject of plaintiff's suit, will be missing.

Plaintiff's Complaint alleges that Hubbard has consistently acted through proxies, always having others perform the actions he desires. The intervention petition before his court substantiates this allegation. There can be no doubt that Mary Sue Hubbard is acting as Hubbard's agent, providing Hubbard's defense attempting to protect him from the judgment which would be entered against almost any other individual who took his attitude and keeping him from having to answer to the persons whose rights he has so maliciously and calculatedly violated.

Further, from every indication Hubbard is even paying for his wife to present his defenses in her name. Mrs. Hubbard admits in paragraph 5 of her declaration that her husband is virtually her whole source of income and that he is providing support for her even while she is in prison. Since the United States provides Mrs. Hubbard with her room and board and all other necessaries one must assume that "support" she is receiving is being used to pay her attorneys' fees. Thus, Hubbard, by this intervention will obtain all the advantages of presenting a defense and none of the obligations of being a party to this lawsuit.

These are the sorts of games that are being played by this motion to intervene and this court must be aware of the background while before it examines the extraordinary petition before it.

ARGUMENT

I. MRS. HUBBARD HAS NOT MET THE PREREQUISITES FOR INTERVENTION OF RIGHT AS SET FORWARD IN FED.R.CIV.P. 24(a)(2).

Under certain specified circumstances a person may have a right to intervene in a lawsuit between other parties. These circumstances are spelled out in Rule 24(a)(2) which states:

> "(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

In order for Mrs. Hubbard to intervene as a matter of right in this suit, therefore, she must prove she meets the three requirements imposed by the Rule. She must demonstrate that (1) she has an interest relating to the property or transaction which is the subject of this action; (2) the disposition of the suit might as a practical matter impair or impede her ability to protect that interest; and (3) her interest is not adequately represented by an existing party. The burden of making these three distinct showings falls squarely on Mrs. Hubbard. See, Newport News Shipbuilding and Drydock Co., v. Peninsula Shipbuilder Association, 646 F.2d 117 (4th Cir. 1981). In this case, Mary Sue Hubbard has failed to make the requisite showing.

A. Mary Sue Hubbard Does Not have a Significantly Protectable Interest in the Property or Transaction which is the Subject of This Suit.

The definition of what constitutes an "interest" for the purposes of Rule 24(a)(2) has not been precisely determined. Meridian Homes Corp., v. Nicholas W. Parass & Co., 683 F.2d 201, 203 (7th Cir., 1982). Mrs. Hubbard has noted and relied upon Cascade National Gas Corp., v. El Paso Natural Gas Corp., 386 U.S. 129 (1967) (anti-trust case brought by the United States concerning natural gas regulations). Although Cascade might seem to indicate that an "interest" should be construed broadly when public concerns are affected, Mrs. Hubbard interprets it to mean that any time a lawsuit may affect a third party, the third party has a right to intervene.

Cascade, is not the Supreme Court's last word on intervention; Mrs. Hubbard's interpretation of that case is severly undercut by that court's decision four years later in Donaldson v. United States, 400 U.S. 517 (1971). There, a unanimous court denied a taxpayer's attempt to intervene in an IRS summons enforcement proceeding even though the materials subpoenaed records directly concerning the taxpayer, and disclosure to IRS might infringe the taxpayer's privacy rights. Nonetheless, the court refused to permit the intervention holding that:

> This interest cannot be the kind contemplated by Rule 24 (a)(2) when it speaks in general terms of "an interest relating to the property or transaction which is the subject of the action." What is obviously meant there is a significantly protectable interest. Id. at 542 (emphasis supplied)

The lower courts have astutely interpreted these cases as encouraging liberality in identifying an interest for the purposes of Rule 24 (a)(2), but requiring the interest be direct and substantial in order for it to be protected. See Meridian Homes Corp., v. Nicholas W. Parass & Co., 683 F.2d 201, 204 (7th Cir., 1982). Others have noted that a broad interpretation of "interest" is more likely to be adopted in those cases which involve important public concerns such as Cascade. But where the lawsuit does not have significant public repercussions, and is simply a private action between the parties, the narrower interest standard is applied, such as in Donaldson, supra. See 3B Moore's Federal Practice, paragraph #24.07 [2]; Jet Traders Investment Corp., v. Tekair Ltd, 89 F.R.D. 560, 569 (D. Del. 1981). The suit at bar, of course, is a private lawsuit between two individuals, and accordingly, the narrower framework should be adopted.

Mary Sue Hubbard presents three interests to this court which she claims satisfy the first requirement of Rule 24(a)(2). Two are economic; her interest in Hubbard's estate as a legatee under his will, and her interest in the support and maintenance he provides her. Mrs. Hubbard also claims she has an interest in protecting her

reputation due to the allegations contained in Plaintiff's Complaint. None of these "interests" are direct or substantial enough to permit a person to intervene as a matter of right.

1. Mrs. Hubbard's interest in Hubbard's estate as a legatee under his will is contingent and cannot be recognized under Rule 24 (a)(2).

There are few fixed rules for determining a recognizable interest under Rule 24 (a)(2), but one of the best established is that the interest must be a "direct, substantial, legally protectable interest in the proceedings". Diaz v. Southern Drilling Corp. 427 F.2d 1118, 1124 (5th Cir., 1970). Mrs. Hubbard, in fact, recognizes this proposition on page 10 of her Memorandum. The necessary corellary to the requirement that interest be direct and substantial is that contingent interests are not legally sufficient under Rule 24 (a)(2), and the federal courts have repeatedly adopted this position. See United States v. 936.71 Acres of Land, 418 F.2d, 551, 556 (5th Cir., 1969); Liberty Mutual Insurance Co., v. Pacific Indemnity Co., 76 F.R.D. 656, 658-660 (W.D. Pa., 1977); In Re Penn Central Commercial Paper Litigation, 62 F.R.D. 341, 346 (S.D.M.Y., 1977) Aff'd 515 F2d 505 (2nd Cir., 1975); United States v. Carrols Development Corp., 454 F.Supp. 1215, 1219-1220 (N.D.M.D.Y., 1978). This District too has adopted this position in United States v. Massachusetts Maritime Academy, 76 F.R.D. 595, 596 (D. Mass., 1977),

when it held that "an interest to satisfy the requirements of Rule (a)(2), must be significant, must be direct rather than contingent and must be based on a right which belongs to the proposed intervenor rather than to an existing party to the suit", citing In Re Penn Central Commercial Paper Litigation, supra.

Thus, in In Re Penn Central Commercial Paper Litigation, supra at 346, 347, a bank which purchased commercial paper for a customer from an underwriter was not permitted to intervene in the suit between the customer and the underwriter, even though it was being sued by the customer for the same transaction in a separate action and if it lost in that action, it would have an equitable interest in the commercial paper. The court correctly noted that the Bank's interest in the outcome of the underwriters's suit was contingent at best, it would only arise if the bank lost its suit, and therefore the interest was not recognizable. Similarly, in Kheel v. American Steamship Owner Mutual Protection and Indemnity Association, 45 F.R.D. 281 (S.D.M.Y., 1968), five longshoremen who had torts claims pending against a bankrupt steamship line sought to intervene in an action between the trustee in bankruptcy and the steamship line's liability insurer. The would-be intervenors, however, had not taken their claims to judgment. The court held that "the mere existence of a third person's contingent interest in the outcome of pending litigation is insufficient to warrant intervention." 45 F.R.D. at 284.

It is clear that Mary Sue Hubbard's claimed interest under her husband's will is every bit as contingent as the movants' interests in the cases cited above. A beneficiary under a will has no right to any part of the Testator's estate until the Testator dies. 6 Page, The Law of Wills (Rev ed) Sec. 59.2. Mary Sue Hubbard, therefore, has no interest in Hubbard's estate, much less the property or transaction before this Court, until she survives Hubbard; her interest depends completely upon that contingency.

In addition, Mrs. Hubbard's interest is as ephemeral as it is contingent. Even assuming she survives Hubbard, her interest could be destroyed at any time. Hubbard is always free to change his will. Similarly, it appears entirely possible that Hubbard and Mary Sue Hubbard may divorce each other; this would automatically nullify any of the bequests in her favor. And, of course, Mary Sue Hubbard must survive -- an assumption one cannot automatically make.

Further, Mary Sue Hubbard has presented no facts other than her own words, that indicate she is a primary legatee under Hubbard's will. She claims not to have seen her husband in close to four years, and claims not to have been in regular communication with him. She does not say that she has seen a recent copy of the will. If so, she is contradicting her statement in Paragraph #13 that she knows of no one who knows where her husband is. Clearly, the person who showed her the will must have known where he was, or

how to contact him or someone who did know. Further, the will, in order to be vaild, had to be signed by witnesses, and it probably identified Hubbard's domicile. Also, if she had read the will, she would have an excellent idea of what Hubbard's assets are, although in Paragraph #6 of her Declaration, she claims she is not familiar with them. It makes no sense that she could not know anything about her husband's whereabouts or assets yet still claim to be knowledgable about something so personal as his will. If Mary Sue Hubbard intends to intervene in this suit on the basis of her interest in the will, she must have more substantial proof that such an interest exists.

Finally, this court should be aware of the consequences of permitting intervention on the showing of such a minimal interest. Under this theory of interest anyone who anticipated being remembered in a will would be able to intervene. Spouses, children, parents, relatives, friends, even favorite charities would all have a suitable interest under Rule 24 (a)(2). Allowing so many people to intervene would seriously hamper the management of federal litigation. See Crosby, Steam Gage & Valve Co. v. Manning, Maxwell & Moore, Inc., 51 F.Supp. 972, 973 (D. Mass. 1943) (discussed infra at page 51). Further, recognizing such a broad class of potential intervenors is totally at odds with the deliberate language of Rule 24 (a)(2) which carefully limits those permitted to intervene as of right. Had the drafters intended to permit such a large class of intervenors, they would have drafted a less deliberate Rule.

2. Mary Sue Hubbard's interest in maintaining support from L. Ron Hubbard is not an interest relating to the property or transaction which is the subject of this action.

Mary Sue Hubbard's second claimed "interest" is her right to receive support from her husband. She claims that if a judgment in this case is rendered against Hubbard it would reduce, and perhaps destroy, her husband's ability to support her.[2]

Before Mrs. Hubbard can assert that a right to support is a sufficient interest under Rule 24 (a)(2), she must first prove that such a right exists. Mrs. Hubbard points to no statutory or case law which provides her with the right to support nor does she present any agreement between her and her husband which would provide her with such rights. Conclusionary assertions contained in Mrs. Hubbard's declaration and memorandum are not sufficient to prove that a right to support does exist.

---

[2]Mary Sue Hubbard appears to base this conclusion on the assumption that a default judgment for $141 million will be entered if Hubbard fails to show. The exact amount of damages will only be determined, even if defendant defaults, after an assessment hearing. At this point they are uncertain, and it would be premature to pinpoint a figure. Further, many of the counts are different theories based on the same or similar facts. Whether plaintiff will recover separately for each in the full amount of the ad dammum cannot at this point be determined.

The obligation that a husband has to support his wife, and what that obligation entails, varies in every jurisdiction in this country. In some jurisdictions that right may be minimal, in others it may give the wife extensive property rights. In many jurisdictions that right only covers "necessaries" which in Mrs. Hubbard's case are currently being supplied by the United States Government, since Mrs. Hubbard is a convicted federal felon. Thus, Mrs. Hubbard may have no rights to support at all, depending on the law of jurisdiction that governs her marriage.

But Mrs. Hubbard has not even identified what jurisdiction that might be, much less proven what rights she has under its law. Indeed, previous affidavits of Mrs. Hubbard indicate that she has no right to support under the law of any state. In her declaration of September 21, 1982, which has been attached at Exhibit 3, Mrs. Hubbard stated at page 8:

> "[T]he only place in the last 30 years where my husband and I have resided with the intent to remain permanently was Sussex, England. We never resided in the state of California with the intention to remain permanently. . . . The last residence which we had was a residence that we considered a long term residence that we were settled in and intended to remain in was our home in Sussex, England."

Thus, Mrs. Hubbard conceded in 1982 that her marriage was not domiciled in any of the United States, and therefore is not subject to any state's law. This is consistent with Mrs. Hubbard's previous

contentions that her husband is a nomad, see defendant's and Mary Sue Hubbard's memorandum in support of motion to dismiss filed in Burden, Exhibit 4. Therefore, her marriage is not protected by the laws of any jurisdiction.

Nor has Mrs. Hubbard presented any factual basis indicating she is entitled to, or even receives support other than her own conclusionary allegations to that effect. Mrs. Hubbard has not submitted any financial statements proving she has no assets of her own, or that the income she accumulated during the years when she was the controller of CSC is insufficient to support her. In fact, she has not even demonstrated she requires support. As an inmate in a federal penitentiary, it is hard to see what her expenses are that require support. Nor is there any evidence that Hubbard has consistently provided such support. She has not produced any checks, bank statements or financial agreements. If Mrs. Hubbard is going to rely on her continuing support to allow her to intervene, she must produce proof that such support exists.

Proof of a sufficient interest under Rule 24(a)(2) requires more than vague assertions by the propsed intervenor. See Warheit v. Olsen, 57 F.R.D. 629, 630 (E. D. Mich., 1973). Yet this is all Mrs. Hubbard has provided. She has not shown any factual basis proving she requires support, nor has she proven to this court exactly what her rights entail. An inchoate claim to support

substantiated only by Mrs. Hubbard's own word and unsupported by statute is not the type of "direct, substantial interest" an applicant must provide under Rule 24(a)(2).

Assuming, arguendo, that Mrs. Hubbard has shown some significant right to support, this right is still an insufficient interest under the Rule 24 (a)(2) because it is not an interest relating to the property or transaction which is the subject of this action. The transaction which is the subject of this action is the tortious acts against plaintiff which L. Ron Hubbard is alleged to have caused. Mrs. Hubbard's right to support has nothing to do with whether these actions occurred. Whether Hubbard is liable or not will not affect whatever rights to support she may have. Similarly, this is not a case like the California probate where Hubbard's assets, and the question of who should control them, is before the court. Plaintiff only seeks compensation for the injuries he has suffered, he does not claim rights in any specific property which belongs to Hubbard.

While plaintiff does not deny that Mary Sue Hubbard may be concerned about the action at bar as it does affect her husband and, consequently, could affect the finances she allegedly receives from him, such a concern does not amount to an interest in the property transaction which is the subject of this suit. The large difference between natural concerns and interest is made quite clear in cases such as Wade v. Goldscmidt, 673 F2d 192 (7th Cir.) and Meridian Homes v. Nicholas W. Prassas & Co., 683 F2d 201 (7th Cir., 1982).

In Wade v. Goldschmidt, the original suit involved an action by property owners against the United States Department of Transportation and the State of Illinois claiming that the construction of a proposed highway would violate numerous statutes and treaties. Property owners who had economic, environmental and personal interest in the construction of the highway as proposed were not permitted to intervene as defendants because the transaction before the court was only whether the highway should be built, or where it should be built -- issues in which the movants had an interest -- but whether the governmental defendants had complied with statutory requirements, an issue in which only the governmental parties accused of violating the law had a legitimate interest. 673 F.2d at 185-186. Thus, even though the court's decision might have had an economic effect on the potential intervenors, only the parties who are accused of violating the law had an interest in the case. The same, of course, is true in this case.

In Meridian Homes, the applicants for intervention were two brothers who had rights to a share of the profits of a partnership, but were not partners themselves. The brothers sought to intervenors as defendants in a suit to dissolve a joint venture the partnership was involved in, claiming that the dissolution of the joint venture would severely effect the partnership's profits. The brothers, however, only held an indirect interest in the subject

matter and were not permitted to intervene. The brothers' interest, as the court pointed out, was only

> "in the profits of the joint venture to which the Prassas Company may be entitled, regardless of whether the joint venture continues in existence or is dissolved. How the profits are generated, how the joint venture is managed, or whether the joint venture continues are matters which may indeed be of concern to the brothers insofar as they might affect the available profits, but they are not matters in which the brothers have a direct and substantial, and therefore legally protectable, interest."
>
> 683 F.2d at 204 (emphasis supplied in second sentence)

The parallels to the case at bar are obvious. Assuming arguendo that Mary Sue Hubbard has a right to support from L. Ron Hubbard, and if she does, that how Hubbard conducts his personal business, how he manages his assets, and the claims that are made against him, may be of concern to her insofar as all of these things affect how well and to what extent Hubbard will be able to support her. Even so, this does not mean she has a direct and substantial interest to intervene in court proceedings concerning these matters.

At best, Mrs. Hubbard's interest is analagous to that of a creditor who seeks intervention in another suit against his debtor because he wants to be sure there is enough money for his claims to be paid. But except where a distinct, distinguishable fund is directly involved in the controversey, the courts have consistently refused to allow intervention simply because the existence of another action may decrease the ability of the would-be intervenor

to collect on his claims. See Jet Traders Investment Corp., v. Tekair, 89 F.R.D. 560, 569-570, 572-573 (D. Del., 1981) and cases cited therein. As the Ninth Circuit stated in Hawaii-Pacific Venture Capital Corp., v. Rothbard, 564 F.2d 1343, 1346 (9th Cir., 1977):

> "Logically extended . . . [such a rule] would give the right to intervene in [an] action . . . to all persons with potential claims against any party in the . . . action . . . on the ground that the outcome of the . . . suit may increase or decrease the collectibility of their claims. This would abandon completely the general notion that a plaintiff may control his action and the F.R.C.P. Rule 24(a)(2) requirement that an unrepresented petitioner must show an interest in the underlying transaction to support an absolute right of intervention."

See also: Jet Traders Investment Corp., v. Teakair Ltd., supra; Liberty Mutual Insurance Co., v. Pacific Indemnity Co. 76 F.R.D. 656, 658-660 (W. D. Pa., 1977); In Re Penn Central Commercial Paper Litigation, 62 F.R.D. 341, 346 (S.D.N.Y., 1974) aff'd 515, F.2d 505 (2nd Cir., 1975); Warheit v. Osten, 57 F.R.D. 629, 630 (E.D. Mich., 1973).

Mrs. Hubbard relies heavily upon S.E.C. v. Flight Transporation Corp., 699, F.2d 943 (8th Cir., 1983), claiming that her interst is identical to the intervenor's interest in that case. The circumstances and interests involved in that case, however, are substantially different than those presented by this case. In that

case, the S.E.C. not only commenced a lawsuit against Rubin, the president of Flight Transport Corp. (FTC) for restitution for all investors defrauded by FTC, but it had a court-appointed receiver take control of all of FTC's and Rubin's assets, which were indistinguishable, and it had the court stay all other actions against FTC and Rubin, including bankruptcy proceedings against FTC and Mrs. Rubin's divorce action. These exceptional circumstances, as the court noted at 947, gave persons rights to intervene under Rule 24 which they would not normally possess.

First, Rubin's property was the subject of the original action since the court, through its receiver, had control over all of his assets, and the suit sought to determine who had the rights to those assets. Mrs. Rubin had an interest in the assets as marital property, and hence had an interest under Rule 24. In the present case, of course, Hubbard's assets are not the subject of the suit, and the court has no control over them. Second, the claimants had no choice but to intervene if they wished to assert their rights. They were prohibited from pursuing their claims by any other means. No such restriction bars Mrs. Hubbard. And finally, as a practical matter, FTC had no other assets besides those which were before the court; any claimant against FTC had to go after the assets involved in the S.E.C. suit. There has been no showing in this case that a judgment against Hubbard would involve all of Hubbard's assets. Mrs. Hubbard has presented no evidence on this

point. Clearly therefore, unlike the spouse in Flight Transport, Mrs. Hubbard cannot claim she must intervene because she cannot get the funds she may have a right to elsewhere.

Moreover, Mrs. Hubbard is plainly wrong in stating that Flight Transport stands for the proposition that a wife's inchoate support interest is sufficient to entitle her to intervene as of right in any action against her husband. The interest of Mrs. Rubin was not a vague support right, but a definite interest in her husband's property which arose under a specific Minnesota statute. As discussed above, Mary Sue Hubbard has not pointed to any such statute or law giving her a definite right in her husband's property. Further, the right granted under the Minnesota statute arose because Mrs. Rubin was divorcing her husband. Oridnarily a wife would not have such rights in her husband's property.[3] Mrs. Hubbard, of course, is not in the process of dissolving her marriage. Therefore, even if we assume that rights analagous to the ones described in the Minnesota statutes existed -- in whatever jurisdiction controls her marriage -- they would not apply.

---

[3] The statute involved, Minn. Stat. and Ann. Sec. 518 .44, is part of Minnesota's divorce statutes and defines what property a spouse may have a right to in a property settlement pursuant to a divorce. The general obligations, liabilities and property rights of married persons under Minnesota law are defined elsewhere. See Minn Stat. and Ann. Sec. 519 et. seq.

The situation in this case is far closer to the one described in F.D.I.C. v. Hanrahan, 612 F.2d 1051 (7th Cir., 1980), the only other case of which plaintiff is aware where one spouse tried to intervene in a suit brought by a third party against the other spouse. In Hanrahan, the wife failed in her attempt to intervene as a defendant in a collection suit against her husband where he had put up a bond for $45,000.

In Hanrahan, like the present case, the wife tried to intervene as a defendant. And there, the wife's claim for intervention was much stronger than it is here. Mrs. Hanrahan had a legitimate claim that the property directly before the court was hers. Further, the bond clearly would have affected the husband's ability to support his wife, since it represented the proceeds of the sale of the marital home. Nonetheless, the court still held that Mrs. Hanrahan had an insufficient interest to intervene. It should be clear now that Mrs. Hubbard's nebulous interest in property of her husband's which is not even the subject of this suit is likewise insufficient.

Mary Sue Hubbard's claim that she has a right to intervene in any action against her husband because he supports her means that every spouse, child, parent or relative who is entitled to support under the law has a right to intervene in any action involving the person who supports them. Obviously, the cases do not support this

proposition, nor does the language of Rule 24(a)(2), which clearly attempts to limit the people who are entitled to intervene. Such a general interest is simply not a protectable interest in the property or transaction before the court.

3. Mary Sue Hubbard's interest in her reputation is not a significantly protectable interest.

Finally, Mrs. Hubbard claims her interest in protecting her reputation mandates that she be allowed to intervene in this action. Yet any damage to her reputation by Plaintiff's Complaint is clearly inconsequential. Mary Sue Hubbard is mentioned precisely three times in a 70 page complaint (paragraphs #9, 58, and 101) and this includes one reference to "the Hubbards" which plaintiff did not intend. In those paragraphs Mary Sue Hubbard is merely identified as an agent of Hubbards. She is not specifically connected to any of the incidents alleged in the complaint and plaintiff clearly does not look to her for damages. Given the rather vague references made to her, it is difficult to see how her reputation has been muddied.

Mrs. Hubbard claims she is hurt because the complaint alleges that the Guardian's Office carried out the acts alleged and that she was responsible for the G.O. at the time many of the incidents were committed. The complaint, however, does not link Mrs. Hubbard and the Guardian's Office. She is only identified as Hubbard's wife (Jane Kember, in fact, is identified in paragraph #9 as the head of

the G.O.). Thus, if the public reputation of Mrs. Hubbard has been harmed because as the supervisor of the G.O. she was responsible for the acts of the G.O. described in the complaint, that harm has been solely caused by Mrs. Hubbard herself. She is the one, not the plaintiff, who has publicized that connection and created any guilt by association that exists. Clearly, she should not be permitted to injure her own reputation and then use that injury to intervene.

Further, it is very questionable whether there is any basis for any guilt by association to besmirch Mrs. Hubbard's reputation. Despite her assertion in paragraph #16 of her affidavit that she was the controller of CSC until November, of 1981 and supervised the Guardian's Offices at this time, there is substantial evidence to the contrary. In May, 1980, in response to an interrogatory filed in the Burden case asking for the address of Mary Sue Hubbard, CSC answered:

> "Defendant, Church of Scientology of California has no knowledge of the address of Mary Sue Hubbard."

(This answer is annexed as Exhibit 7). Similarly, in a deposition in Burden on March 5, 1981 Philip Park, the head of CSC's legal bureau and the person produced by CSC in response to a subpoena for a corporate representative, confirmed that CSC had no idea where Mrs. Hubbard was in response to a question as to what sort of investigation was made to discover her address, Park stated:

> "I went to California and I searched through the files of various officers of the Church to determine for myself if the Church indeed had the addresses of Mr. and -- or Mrs. Hubbard.
>
> I spoke -- in fact, I spent some six to eight hours walking and looking at files in the building of the Church in California, which covers a whole city block and I also spoke with the president of the Church of Scientology of California and my search and inquiry has lead me to be able to state under oath that the Church of Scientology does not know the addresses of Mr. and Mrs. Hubbard."
>
> Deposition of Philip Park, March 5, 1981, P. 100-101, a copy of which is attached as Exhibit 8.

If top officials for the organization Mrs. Hubbard claims to have been working for have repeatedly sworn under oath that they did not even know where to find Mrs. Hubbard in 1980 and 1981, it is extremely doubtful that she was personally supervising the activities of one of that organization's most important divisions. Mrs. Hubbard may have held a figurehead title at that time, but in reality she was not so intimately connected with the G.O. during the time of the incidents alleged in Plaintiff's Complaint that any assertion against the G.O. is an automatic calumny against her.[4]

---

[4] Plaintiff in making this argument does not retract any claims against Mrs. Hubbard which he may have alleged in the suits of his clients. The incidents described in those cases occurred at a different time, when Mrs. Hubbard was much more involved in the operations of the G.O. It should also be apparent that whatever allegations are contained in plaintiff's clients' complaints against Mrs. Hubbard have nothing to do with whether Mrs. Hubbard's reputation is impaired by the allegations in this suit.

It is also difficult to conceive how Mrs. Hubbard's reputation can be harmed at all. Mary Sue Hubbard is a convicted federal felon currently serving a four year prison sentence for obstructing justice, obstructing a criminal investigation, harboring and concealing a fugitive and making false declarations. She has signed a stipulation of evidence which states that she was the head of a conspiracy which included breaking into government offices, stealing federal documents, interfering with federal investigations and kidnapping. See United States v. Heldt, 668 F.2d 1238, 1241 (D. C. Cir., 1981). These crimes, which have been widely publicized are at least as serious as the allegations plaintiff has made in his complaint. Thus, even if plaintiff had stated that Mary Sue Hubbard was directly responsible for each action taken against him, such an accusation by a private person would hardly change her public reputation; she has already been sent to prison by a federal court for similar types of activities. In reality, of course, plaintiff has made no direct or indirect allegations against Mrs. Hubbard except that she has acted as an agent for her husband. Compared to the severity of the crimes for which she has been convicted this vague assertion would hardly damage any that remains of her public reputation.

If this court, however, finds that Mrs. Hubbard still has a reputation and that the bringing of this lawsuit might damage it, such an interest is still insufficient to warrant intervention under Rule 24(a)(2).

This is made clear in Edmundson v. Nebraska ex. rel. Meyer, 383 F.2d 123 (8th Cir., 1967). In that case, a former prisoner Rhodes, had sued a Nebraska prison guard, Edmundson, and had obtained a $450,000 judgment when the guard defaulted. Later, Nebraska brought a suit against Rhodes alone which specifically alleged that the default judgment in the first suit was obtained due to fraud and collusion between him and Edmundson. Edmundson sought to intervene in this second suit, and the court rejected his application.

> "Edmundson asserts that his interest in the outcome is provided by plaintiffs' allegation of his fraud and collusion with Rhodes. Plaintiffs, however, are seeking no relief against Edmundson. So whatever the disposition of this issue, it would not affect Edmundson's legal interest. The mere fact that proof of Edmundson's actions in the Kansas court amounted to a fraud cannot serve as a basis for mandatory intervention wihout a showing that legal detriment flows from this finding. The mere fact that Edmundson's reputation is thereby injured is not enough." (emphasis added)
>
> 383 F.2d at 127

The interest Mary Sue Hubbard presents here is identical to Edmundson's, except that Edmundson had far more certain damage to his reputation. He was specifically mentioned as having participated in the fraudulent action against the court. Nevertheless, despite the specific accusation assailed at Edmundson's previously unblemished reputation, the court held no recognizable interest existed to permit intervention.

Mary Sue Hubbard ignores the Edmundson case and instead relies upon a series of cases which hold that certain types of damage to reputation are sufficient to maintain a cause of action. A substantial difference exists, however, between these types of cases. "In the context of intervention the question is not whether a lawsuit should be begun, but whether already initiated litigation should be extended to include additional parties." Smuck v. Hobson, 408 F2D 175, 179 (D. C. Cir., 1969); Wade.v. Goldschmidt, 673 F2D 183, 184 (7th Cir. 1982). The considerations are quite different and findings in one area do not neccessarily apply to the other.

It should also be noted that none of the cases cited by Mrs. Hubbard deal with alleged damage of reputation by a private individual. All of these cases concern a governmental agency naming but not suing a specific individual, often in a criminal case or quasi-criminal situation. The stigma which attaches when the government, which is supposedly impartial and which has great power, singles an individual out and then gives him no chance to defend his name is far more damaging than the mere mention of a person in a private lawsuit.

Nonetheless, even if these non-intervention cases are analagous, they still give no support to Mrs. Hubbard's claim that damage to personal reputation alone is a substantial interest which must be protected, for Mrs. Hubbard has ignored the culmination of the Supreme Court's reasoning in this line of cases, Paul v. Davis, 424, 875 693 (1976).

In Paul v. Davis, the plaintiff's name was circulated to local merchants by the police department on a list of "active shoplifters." There was no basis for including plaintiff's name on such a list and relying on cases such as Joint Anti-Fascist Reserve Comm. v. McGrath, 3410 Sec. 123 (1951) and Jenkins v. McKeithan, 395 U.S. 411 (1969), the cases cited by Mrs. Hubbard, plaintiff sued the police department for the damage caused to his reputation. The court, after an extensive review of its cases, held that damage for one's reputation alone without any consequental economic or liberty loss, was not sufficient to maintain a right of action.

In contrast, in McGrath, the organizations labeled communist suffered a loss of membership, a decline in public contributions, and its members were subject to action by the Attorney General, while in Jenkins the person investigated suffered severe economic harm, and was unable to continue in his trade after the state commission's publication of their findings.

Mrs. Hubbard's situation is very similar to the plaintiff in Paul v. Davis. All she claims to have suffered, if anything, is a loss of her personal reputation. No economic loss has been alleged, nor could be. Mrs. Hubbard does not work, and since she is in jail will not be able to for some time. Nor have the allegations cost Mrs. Hubbard loss of her liberties, she lost these through her own actions. Unless she has suffered damage to something other than her

reputation, which she does not allege, Mrs. Hubbard does not have a sufficient interest in either a cause of action or intervention to this action.

B. Mrs. Hubbard's Interests Will Not be Impaired if She is Not Permitted to Intervene.

The second requirement of Rule 24 (a)(2) is that the applicant's interests would be impaired as a practical matter if she is not allowed to intervene. Mrs. Hubbard appears to claim that her support and expectancy interests will be impaired because if plaintiff obtained a judgment it would decrease the assets which are the source of these interests. As to her reputation interest, she claims that even a default judgment would preclude her from protecting her reputation, because the public would think that such a judgment confirmed the allegations in the complaint. Mrs. Hubbard is incorrect in assuming that either of these situations actually impair her rights.

Mrs. Hubbard's claim that if plaintiff recovers her judgment, there will be less to satisfy her inchoate claims against Hubbard, is the same sort of impairment alleged when one creditor wishes to intervene in another creditor's claim against the same debtor. In Jet Traders Investment Corp. v. Tekair Ltd., 89 F.R.D. 560, 569-570 Del. 1981), however it is made clear that this situation rarely results in impairment.

> "In some limited situations, the fact that the first action might deplete specific, identifiable funds before the court so as to make it unlikely that the proposed intervenor could be fully compensated has been considered sufficient impairment of interest to meet the Rule 24 (a)(2) standard. However, such cases are limited to situations where a discrete, distinguishable fund exists and where the intervenor has some presently, legally enforceable interest in that fund as where his claim against that fund arises from the same factual basis as does the claim in the original action. . . .However, the mere fact that the first action may decrease the ability of the intervenor to collect a potential judgment against the defendant is insufficient to be considered a substantial impairment of an interest for the purposes of Rule 24 (a)(2)."
>
> 89 F.R.D at 569-570 (citations omitted).

See also: Hawaii - Pacific Venture Capital Corp. v. Rothbard, supra; In re Penn Central Commercial Paper Litigation, supra; Section IA2 supra.

Mrs. Hubbard does not qualify for the limited exeption described obove. As noted above in Section IA2 there is no specific identifiable fund before the court. Nor has Mrs. Hubbard shown that a judgment against her husband would make it impossible for him to support her. Clearly, against most men a judgment in the amount of the damages suffered by plaintiff would be an overwhelming financial burden, but Hubbard, as plaintiff is prepared to prove, is an exceptionally wealthy man who made well over $100 million from Scientology "Churches" and recently received $85 million for the transfer of his trademarks. See affidavit of Michael J. Flynn in

support of plaintiff's motion to approve substantial service, paragraph #11 and affidavit of Michael J. Flynn in support of motion for preliminary discovery, paragraph #5. In addition, as Mrs. Hubbard admits, Mrs. Hubbard has written numerous books, including a recent bestseller, and regularly receives royalties from their sales.

Mrs. Hubbard just seems to assume Hubbard could not continue to support her, but she presents no facts. She has presented no financial statements of her husband's wealth, no financial statement of her own resources proving she requires support and demonstrating how great her need is, (one must also recall that for the next three years, the United States government will be providing all the support she requires, except, of course, attorneys' fees) and no direct evidence that she has received regular support from her husband (who she has only seen in the past six years on two or three occasions, see declaration of Mary Sue Hubbard, September 21, 1982, Paragraph 3) (Exhibit B) and she indeed admits in the declaration she has filed herewith he is not even familiar with her husband's assets, paragraph 6. There is simply no evidence to show that this action will in any way substantially impair Mrs. Hubbard's rights to her husband's estate or assets, if indeed she possesses any.

Nor would Mrs. Hubbard's reputation be impaired if she did not intervene, even if Hubbard defaulted. The usual manner of redressing injuries caused to one's reputation is to sue the

injuring party for defamation. This option is available to Mrs. Hubbard even if her husband defaults, since a default judgment against Hubbard cannot be used to collaterally estop Mrs. Hubbard nor is in any way practically determinative of her rights. Indeed, Mrs. Hubbard is well aware of defamation remedies. Counts 3 and 4 of her proposed counterclaim are for libel. When a potential intervenor still has a valid cause of action against the party he seeks to intervene against, even if the original suit proceeds without him, there is no impairment. See e.g., McChune v. Shamah 593 F2d 482 (3rd Cir., 1979), Babock & Wilcox Co., v. Parsons Corp., 430 F2d (10th Cir., 1970).

C. If Mrs. Hubbard's Interests Will Not be Adequately Represented in This Action it is Due to Mrs. Hubbard's Collusive Actions with the Defendant.

There should be little question that if L. Ron Hubbard appears, Mary Sue Hubbard will be adequately represented. Hubbard would have stronger reasons for defending his assets, the alleged source of Mrs. Hubbard's support and expectancy interests and proving that alleged events never occurred, the source of Mrs. Hubbard's reputational interest. When a party's interests are identical to the interests of the proposed intervenor, the applicant is adequately represented and intervention is not permitted. See Edmondson v. Nebraska ex rel Meyer, supra, Moosehead Sanitary District v. S.G. Phillips Corp., 610 F.2d 49 (1st Cir., 1979).

Thus, Mrs. Hubbard's intervention depends on Hubbard's non-appearance. Yet, at this time that is a matter of speculation. Hubbard has not been served and therefore is not under obligation to reply.[5] Once served, however, Hubbard will have to appear or suffer a default. As we have seen in the California Probate case such a direct threat to his assets has forced him to come forward in the past, albeit at the eleventh hour. Plaintiff believes that Hubbard will repeat this behavior. Mrs. Hubbard, who claims she has not been in contact with her husband, relies on conjecture. This is insufficient to establish that her interests are not being represented, particularly when the party who represents them has far more at stake than her.

---

[5] In fact, Mrs. Hubbard by moving to stay all proceedings is delaying the action which is necessary to find out whether Hubbard will appear. Substituted service on Hubbard, of course, has nothing with her status or defenses in this lawsuit. Even if she is allowed in, would have no standing to argue against it. See order of Judge McNaught denying the Church of Scientology of Boston, Inc. standing to object to a similar motion for substituted service on L. Ron Hubbard in Cooper v. Church of Scientology of Boston, Inc., et al #81-681-MC (D. Mass.), copy annexed to the motion for substituted service herein as Exhibit F. Thus, Mrs. Hubbard is actually interfering with the suit, and is attempting to block the action which may guarantee that her interests will be represented.

Even if Hubbard does not appear, though, Mary Sue Hubbard should not be permitted to claim that her interests will not be adequately represented when she has conspired with Hubbard to insure he will not defend those interests. The conspiracy goes back to at least 1975, when Mary Sue Hubbard admits that she ran the Guardian's Offices, and had direct supervisory responsibility for the Guardian's Office World Wide (GWW) and the United States Guardian Office (USGO). See declaration of Mary Sue Hubbard paragraph #16. During this time, the Guardian's Office developed detailed plans and operations to conceal the whereabouts of both Hubbards in order to keep them from having to appear in court proceedings.

These plans were written in response to a direct order from L. Ron Hubbard, GO order 261175 L.R.H. Code Name "Power" (A copy of this order is contained in Exhibit H to plaintiff's motion to approve substituted service of process on L. Ron Hubbard). In it, Hubbard ordered that an early warning system be created so that

> "any situation concerning govts [governments] or courts by reason of suits is known in adequate time to take defensive actions to suddenly raise the level of LRH [L. Ron Hubbard] Personal Security very high"

This order was sent to "DGUS" (Deputy Guardian United States, the highest officer of the USGO) with copies to "GWW" and "CSG". CSG stands for Commodore Staff Guardian, and is the position Mary Sue Hubbard admits having held in her declaration, paragraph #25.

"Project Early Warning Systems B-1" created by the GWW and DGUS was the plan established to comply with Hubbard's order. This plan called for G.O. agents to relay any information on any potential litigation threat to either of the Hubbards to GWW, with a copy going to CSG. The plan called for agents to be especially concerned with those actions which might give a litigant subpoena powers over the Hubbards. See Project Early Warning System: B-1, a copy of which is contained in Exhibit H to plaintiff's motion to approve substituted service of process on L. Ron Hubbard. In 1977 B-1 system was revised slightly due to changes in the level of Hubbard's visability. In revising the project, Dick Weigand, one of its original authors reported to Henning Heldt, the DGUS, that Hubbard's security in 1977 was higher, and "can go much higher easily." In addition he noted that Hubbard had "a deep cover location set up and ready to go as far as I know." See Compliance Report, 29 March 77, p. 2 annexed as Exhibit 9.

Thus, while Mary Sue Hubbard was undisputedly the head of the Guardian's Office,[6] the USGO and GWW established an early

---

6 Plaintiff does not dispute that Mrs. Hubbard supervised the G.O. in the mid 1970's, only that she did not have such supervisory capacity at the time the events alleged in the complaint occurred.

warning system to let Hubbard know of possible suits from government agencies and private litigants and created a deep cover to hide Hubbard if necessary. Mary Sue Hubbard, by her own admission was directly responsible for the people who created this system and indeed played an important role obtaining all reports generated by the warning system. At about the same time, another G.O. plan, "Operation Bulldozer Leak" called for G.O. agents to spread the rumor that "LRH has no control over the C of S and no Legal Liability for Church activity." See Secret GPgmO 408, 21 July 1976, annexed as Exhibit H to Plaintiff's Motion to Approve Substituted Service on L. Ron Hubbard. Mary Sue Hubbard was also directly responsible for the G.O. officers who created this plan.

In February, 1980, the plans set up by the G.O. were put in action. It became apparent that Hubbard would be named as a defendant in a number of private lawsuits, and Hubbard "disappeared". Acting precisely as expected under "Project Early Warning System: Bl" and "Operation Bulldozer Leak" CSC officials consistanly denied any knowledge of the Hubbards' whereabouts after that time and claimed Hubbard had nothing to do with the organization. (See e.g., Deposition of Phillip Park, Exhibit 8 and answer to interrogatory #1 in Burden, Exhibit 7.)

This refrain was echoed, among others, by Mary Sue Hubbard (See deposition, Exhibit 2), Alan Goldfarb, Hubbard's attorney in

Burden. (Exhibit 6), and lawyers for CSC, including Lawrence Heller, (See declaration of Julia Dragojevic, Exhibit C to plaintiff's motion for substituted service of process on L. Ron Hubbard). All have claimed that they know of no one who knows where Hubbard is.

However, evidence obtained in the California Probate case proves that representations by CSC officers, Mrs. Hubbard, Mr. Goldfarb, and Mr. Heller were false and indicate that these misrepresentations were intentionally made in order to further Hubbard's deliberate attempt to conceal himself. This evidence is discussed at length in the plaintiff's memorandum in support of a motion to default in the Burden, p. 17-42 (see plaintiff's motion for preliminary discovery) and as confirmed by Hubbard, Lymon Spurlock and Sherman Lenske in affidavits filed in that case. See motion for substituted service, Exhibit G:

a. Hubbard is in close and regular contact with Lyman Spurlock, a top CSC official and the head of Author Services, Inc. (ASI), Sherman Lenske, a partner in the firm of Lenske, Lenske, Heller & Magusin (the "Lenske Firm") the firm which acts as Hubbard's general counsel, and other high level Scientology officials including David Miscavige and James Issacson.

b. ASI handles much of Hubbard's business arrangements and sends Hubbard weekly reports concerning his investments, royalties, copyrights, trademarks, finances and all other matters which affect his assets and property. This information is received promptly by Hubbard, and he has a constant channel of communication for relaying his instructions back to ASI.

c. The non-commercial rights to Hubbard's trademarks were transferred to a new Scientology organization called the Religious Technology Center ("RTC"). RTC is staffed by top members of CSC and is represented by the Lenske firm. This complicated transaction was performed according to Hubbard's express wishes, and occurred at the same time that Alan Goldfarb (who is in direct contact with the Lenske firm) was claiming that no one in CSC was in contact with Hubbard

Mary Sue Hubbard, having participated in the California Probate case, is familiar with the evidence which was submitted. She personally knows Lyman Spurlock, David Miscavige, James Issacson and Sherman Lenske and knows that they are in close contact with her husband. Thus, her statement that she knows of no one who knows her husband's whereabouts is deceitful and deceptive, if not an outright lie. Further whether these gentlemen know the

exact location of L. Ron Hubbard or not, they are in constant communication with him, and through them Mary Sue Hubbard has a direct line to her husband. To pretend that she has no idea where her husband is and could not find out if she wanted, or at least contact him is a fraud upon this court, pleaded only so she can continue to conceal his whereabouts.

Thus, Mary Sue Hubbard, the supposedly innocent wife who claims her support payments and reputation are irrepairably damaged by her husband's failure to answer, has in reality helped warn Hubbard of impending lawsuits, assisted him in establishing a "deep cover", consistently lied to insure that no one discovers his hidden location and has tried to deceive this court into believing her husand is in "seclusion" when in reality she knows precisely how to communicate with him. Where Mrs. Hubbard has done her best to conceal her husband so that he will never be able to be brought before any court, she cannot claim, when a court finally has jurisdiction over him, that her husband's refusal to appear so injures her rights that she must intervene. To allow her to do so is to make a mockery of justice and rewards deception and deceit.

II. THIS IS AN INAPPROPRIATE CASE FOR PERMISSIVE INTERVENTION UNDER RULE 24(B)(2)

Mrs. Hubbard also seeks intervention under Rule 24(b)(2) which allows the court in its discretion to grant intervention if a

common question of law or fact exists and if intervention will not unduly prejudice or delay the adjudication of the rights of the original parties. In her memorandum Mrs. Hubbard cites a few cases where an applicant has been given leave to intervene as a defendant. But those decisions are in no way binding on this court.

> "The exercise of discretion by a particular judge, responding to all the circumstances of a particular case, is not likely to be of much help to another judge forced with a different case. Accordingly precedence is of very little value on this point." Wright & Miller, Federal Practice & Procedure; Civil Sec. 1913, Vol. 7A, p. 559.

Instead, this court should carefully examine the entire facts and circumstances surrounding the case and should consider those decisions which indicate various factors a court should take into account when determining whether to exercise its discretion.

A. The Counterclaims Raised by Mrs. Hubbard do Not Have a Common Question of Law or Fact with the Main Action and She Cannot Intervene to Raise Them.

The only real requirement for permissive intervention is that the claims or defenses sought to be raised have a common question of fact or law to the the main action; if this is not the case, it is reversible error to permit intervention. See Howse v. SV "Canada Goose I", 641 F2d 317 (5th Cir., 1981). The counter-claim which Mrs. Hubbard proposes to intervene does not have a

single count which has a common question of law and fact with the main action.

Plaintiff's complaint concerns a series of actions taken against him and whether L. Ron Hubbard is liable for those actions. Mrs. Hubbard's counterclaim presents a series of charges that have nothing to do with the main action. The first and second count deal with plaintiff's involvement in the California Probate Case, a case which dealt with whether a trustee should be appointed to control Hubbard's assets since it was unclear whether Hubbard was alive or competent. That case had absolutely nothing to do with torts committed against plaintiff and is irrelevant to Hubbard's liability. The third, forth, and fifth counts are two libel counts and an abuse of process count. Those counts also are not related to the events involved in the main action but concern the bringing of this action. The questions these counts raise are whether plaintiff's complaint is defamatory, whether Mrs. Hubbard's reputation was damaged by the publication of the complaint, whether there was "malice" in bringing the complaint and whether the complaint was brought in bad faith. The questions surrounding the bringing of a lawsuit are distinct from those raised in the lawsuit itself. See Piedmont Paper Products v. American Financial Corp., 89 F.R.D. 41 (S.D. Ohio, 1980).

It should also be noted that the counterclaims brought by Mrs. Hubbard, are very similar to the 12 previous suits brought by

CSC and other Scientology organizations against the plaintiff in the past. These suits, many of which have been libel or abuse of process suits, are described in paragraphs #24, 26, 27, 28, 47, 53, 54(b), 55(b), and 58 (d) of the complaint and most have been dismissed. See paragraph #65 of the complaint. Scientology plaintiffs have never been concerned about judicial economy in the past, and there is nothing in the present counterclaim which makes it necessary to keep it attached to this suit. Instead of making the management of this suit far more complicated, see Section IIB infra, these claims, if there is any merit to them, should be brought as separate actions.

B. Intervention by Mrs. Hubbard Will Unduly Delay and Prejudice the Adjudication of the Rights of the Original Parties.

Intervention, as this court has recognized in the past, always increases the costs and the time involved in litigation. As Judge Wyzanski noted in Crosby Steam Gage & Valve Co., v. Manning, Maxwell & Moore, Inc., 51 F.Supp. 972, 973 (D. Mass., 1943):

> "Additional parties always take additional time. Even if they have not witnesses of their own, they are the source of additional questions, objections, briefs, arguemtns, motions and the like which tend to make the proceeding a Donnybrook Fair."

In this case, intervention will create extreme prejudice to the plaintiff's rights, and will not lead to any offsetting benefits, particularly since it will insure that the defendant will not appear.

If Mary Sue Hubbard is allowed to intervene, and if Hubbard will not appear, plaintiff will be deprived of obtaining discovery from the most important person in this litigation, the one who is charged with having ordered all the actions against plaintiff. This will hamper the preparation of the plaintiff's case, and plaintiff will be forced to conduct expensive investigations to obtain the information it would normally be able to obtain readily as part of discovery. Mary Sue Hubbard, on the other hand will barrage plaintiff with a mass of objections, motions, paper work and discovery requests. This court has already witnessed the blizzard of paperwork she has produced just to get into the case. Once she gets in, plaintiff submits, this court will be blanketed in paper as she attempts every possible tactic to delay this proceeding and make it as expensive as possible for plaintiff. Indeed, as Mrs. Hubbard admits in paragraph #32 of her complaint, since a default will be entered against Hubbard if he does not appear despite Mrs. Hubbard's presence, it is clearly Mrs. Hubbard's plan to prolong this litigation for as long as possible so as to insure the default cannot be turned into a judgment.

While plaintiff will not be able to conduct any meaningful discovery, Mrs. Hubbard, from whom plaintiff is not even seeking damages, will be able to bombard plaintiff with discovery requests and interrogatories notwithstanding the facts that plaintiff's deposition has been taken many times in related Scientology litigation and that most of the evidence involved in the case is in the possession of persons with whom Mrs. Hubbard has very close relations, her husband and the Guardian's Office.

It is clear that Mrs. Hubbard's involvement will unduly delay the adjudication. If she does not intervene, and Hubbard decides not to appear this action can be completed quickly with relatively small costs. If she is allowed to intervene, this action will take years to conclude and will result in thousands of hours of attorneys' time. See docket sheets in this jurisdiction in Cooper v. Church of Scientology of Boston, Inc., et al, #81-681-MC, (21 double-sided pages) and Van Schaick v. Church of Scientology Inc., #79-2491-G, (16 double-sided pages).

On the other hand, if Mrs. Hubbard is denied intervention there is no prejudice to her. She still has an action against plaintiff for any damages his bringing of this suit may have caused her. Moreover, if she has any recognizable interest in any of Hubbard's property, she can raise that interest as a defense to any execution proceeding pursuant to a default judgment. If a person has fully adequate alternative means to protect her rights, there is

no reason for the plaintiff to incur the prejudice of having her intervene See Konath v. Briscoe, 523 F.2d 1271 (5th Cir. 1975); and of course, there is an excellent possibility that if she does not intervene, Hubbard will come forward.

In this situation, where the costs to plaintiff and this court are far greater than any benefit in having Mrs. Hubbard intervene, and where Mrs. Hubbard still has the means to protect whatever rights she may have permissive intervention should not be permitted.

C. It is Inequitable to Permit Intervention When Such Intervention Would Perpetrate a Fraud Upon the District Courts and Would Aid the Unlawful Concealment of L. Ron Hubbard.

Mrs. Hubbard's application for intervention smacks of collusion and fraud. In the past Mrs. Hubard has done everything possible to conceal the identity of her husband, from overseeing plans in the Guardian's Ofice that would warn him of possible litigation against him, and designing ways of hiding him to lying up until this very day about her contacts and communications with him. Now, after successfully having achieved his concealment so that plaintiff cannot find him, she claims she will be injured if he does not appear.

But this is only the beginning of the ironies. Mrs. Hubbard vigorously protests plaintiff's characterization of her as an agent of her husband. But that is precisely how she is acting in this litigation. She will present his defenses, she will oppose substituted service against him, she will try to prevent any default against him from ripening into an executable judgment, and she will try to protect his assets. She has made her interests so subservient to his that in footnote 1 on page 27 of her memorandum, she tells this court that if it has to choose between hearing her counterclaims against plaintiff, or her defenses for her husband, she would prefer to be able to plead his defenses, not her rights of action. Moreover, it is apparent Hubbard is paying for Mary Sue Hubbard to present his defenses in her name. Mrs. Hubbard claims she has no income of her own and Hubbard is her only source of income. Since attorneys' fees are the only luxury she has that is not provided for her in prison it is Hubbard who is paying for this defense, while pretending not to be involved.

Finally, in this extraordinary situation, intervention guarantees that less voices will be heard, not more. If this court lets Mary Sue Hubbard present defenses there is no practical reason for the defendant to appear. Even the spector of a default will not bring him forward because his wife can delay its ripening into judgment. At the same time plaintiff will be unable to properly prepare his case, because of the unavailability of discovery. The

end result is that plaintiff will be forced to pursue someone he has no interest in pursuing without being prepared. The person who has caused plaintiff monsterous harm and has extensive assets to pay for the damages caused can freely ignore the action and can continue to harass and torment the plaintiff. This is not how Rule 24 was designed to work.

Mrs. Hubbard keeps claiming that it is unfair for plaintiff to recover default judgment because of the severity of the torts alleged and the potential size of the judgment. Plaintiff did not initiate this action in the hope of never having to prove what he has alleged. It is plaintiff's deepest desire to confront Hubbard openly in a court of law to prove that he has been made to suffer and to publicly hold Hubbard accountable for the grevious injuries he has intentionally inflited. If Hubbard does not appear, however, it was not plaintiff who held himself above the law, it was not plaintiff who deliberately concealed himself, allowing a proxy to represent his interests and it was not plaintiff who chose not to defend a multi-million dollar action against him, even if it had adverse consequences to his wife and followers. If Hubbard does not appear, it is due to a conscious decision on his part. He will have caused any harm.

Further, Mary Sue Hubbard is minimally affected, if at all, and has deliberatley aided and abetted the concealment which has caused the non-appearance.

When an intervention application is a sham, put forth in bad faith, a court must deny it. Edmunson v. Nebraska ex. rel., 393 F.2d 123, 128 (8th Cir., 1968). There is no doubt that this is exactly the nature of the application here.

CONCLUSION

For the reasons stated above, plaintiff requests this court to deny Mrs. Hubbard's application for intervention as of right and permissive intervention.

Respectfully submitted,

By his attorneys,

HOLLINGSWORTH & ASSOCIATES

By _____
Wayne B. Hollingsworth

By _____
David M. Banash
10 Union Wharf
Boston, Massachusetts 02109
(617) 227-5100

Dated: October 19, 1983